HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WA No.64 of 2025

The Silkote Tea Company Limited, a company incorporated under the Companies Act, having its Registered Office at 166, Jessor Road, Kolkata-70055. (Represented by its Director Md. Masabbir Ali).

..... *Appellant*(s)

V E R S U S

1. The State of Tripura, represented by the Chief Secretary, Government of Tripura, Secretariat, Capital Complex, P.O. Kunjaban, Agartala, West Tripura.

2. Secretary to the Government of Tripura, Revenue Department, Secretariat, Capital Complex, P.O. Kunjaban, Agartala, West Tripura.

3. The District Magistrate & Collector, P.O. Gaurnagar, Kailashahar, District-Unakoti, Tripura.

4. Sub-Divisional Magistrate, Kailashahar, District-Unakoti, Tripura.

..... *Respondent*(s)

For Appellant(s) : Mr. Gautam Kumar Nama, Advocate.

For Respondent(s) : Mr. Kohinoor N Bhattacharya, G.A.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

Date of hearing : 9th September, 2025.
Date of pronouncement of Judgment & Order : 23rd September, 2025.
Whether fit for Reporting : YES.

JUDGMENT & ORDER

(***M.S. Ramachandra Rao, CJ***)

1) Heard Mr. G.K. Nama, counsel appearing for the appellant and Mr. Kohinoor N Bhattacharya, counsel appearing for the respondents-State.

2) This Writ Appeal is preferred by the appellant challenging the judgment dt.12.07.2024 of the learned Single Judge in WP(C) No.31 of 2023.

Background facts:

3) The Appellant is a Company registered under the Companies Act, having a registered office in Kolkata. It claims to have 2,300 share holders.

4) It claims ownership of Hiracherra Tea Estate comprising of Ac.682.94 in the present Unakoti District of the State of Tripura.

5) The Company claims that it's present management had taken over the management of the said Tea Estate from the erstwhile management in January, 1977 after clearing the dues owed by the previous management to the United Bank of India, who had mortgage of the land of the Tea Estate.

Events from 1960-1963

6) The Tripura Land Revenue and Land Reforms Act, 1960 (for short 'the Act') was enacted in the State of Tripura to consolidate and amend the law relating to land revenue in the State of Tripura and to provide for acquisition of estates and for certain other measures of land reform including *a ceiling on land holdings*.

7) A Gazette notification (Annexure–A to the counter affidavit filed by respondents) was issued on 23.03.1963 by the State Government under Section 134(1) of the Act declaring that with effect from 15.04.1963 all estates situated in Kailashahar Sub-Division and under Puranrajbari Police Station of Belonia Sub-Division and all rights, title and interest of every intermediary in such estates shall vest in the State Government free from all encumbrances.

8) The subject Tea Estate is admittedly covered by the said notification, but Appellant made no mention of it in it's pleadings.

9) The previous management of Appellant i.e., Hiracherra Tea Estate filed a representation (Annexure-4) dt.12.09.1963 before the Administrator, Tripura Administration stating that it is in possession of *surplus ceiling* land of extent 735.66 acres and seeking exemption from the operation of Section 164 of the Act (prescribing ceiling on land holdings) invoking Section 178(1) of the said Act and requesting that it be allowed to *retain the surplus land* under Section 136(1)(f) of the Act.

Events from 1975-1980

10) Initially, the said application was dismissed on 04.12.1975 by the Commissioner of Revenue and Secretary to Government of Tripura by a well reasoned order noting that the previous management of Appellant did not attend 5 consecutive hearings before him and also by giving other reasons about labour not being paid wages, buildings being dilapidated and the Tea factory not working.

11) Almost two years after the order dt.4.12.1975 was passed, a request was made on 13.10.1977 by present Management of the Appellant for reviewing the said order saying it has revived the Tea Garden and the Factory.

12) This request of Appellant to review the order dt.4.12.1975 was considered on 15.05.1980 by the Secretary to the Government of Tripura, Revenue Department and was allowed by the said official.

13) Whether there was power conferred under the Act to review the previous order dt.4.12.1975 by the said official is a matter for consideration in this Appeal.

Events from 2020

14) A complaint/report dt.1.10.2020 was received by the Deputy Secretary to Government of Tripura from the District Magistrate & Collector, Unakoti District saying that the Tea Estate is not functioning.

15) On 03.10.2020, the Secretary, Revenue Department issued show-cause notice to the Appellant for taking action under sub-section (4) of Section 178 proposing to withdraw the retention order passed in Appellant's favor on 15.5.1980. He directed the Appellant to appear before it .

16) Thereafter, a hearing was conducted in which the Appellant's representative also participated, and an order was passed on 05.12.2020 by the Secretary, Revenue Department. In the said order, the previous retention order dt.15.05.1980 was withdrawn for 604.87 acres.

17) In the said order dt.5.12.2020, it was held by the Secretary, Revenue Department:

(i) That the Website of the Register of Companies shows that the company was struck off from the website after its last AGM of 27.09.2016 and its DIN number was inactive. Consequently, the power of attorney given on 26.05.2014 will not be valid and so the representative of the Appellant had no *locus standi*.

(ii) Though opportunities were given to the representative of the Appellant-company to prove why the Secretary, Revenue Department in the proceedings before her has to consider the company as an appropriate party, he did not do anything in that direction.

(iii) The Appellant had failed to commence its business within one year of its incorporation and it is not actively carrying on any business or operation for a period of two immediately preceding financial years and had not made any application within such period for obtaining the status of a dormant company.

(iv) Time was sought by the counsel for the Appellant stating that there was a Case No.1129 of 2020 filed with the NCLT and seeking an adjournment for some time but the adjournment was denied.

(v) The District Magistrate's report produced before the Secretary, Revenue Department indicated that the whole tea garden except plot Nos.514 & 547 with an area of 78.07 acres was degraded for long and no plantation activities except two plots is reported; that this is a serious breach of the terms and conditions of the retention order passed in favour of the Hiracherra Tea Estate on 15.05.1980; an

amount of Rs.10,38,962/- as matching share of Contributory Provident Fund remained unreleased as the Company itself did not exist physically and no initiatives were taken up to issue weekly Ration Cards from the side of the Company.

(vi) The tea garden was in a closure condition and not running well since 15 years and there is total failure of all garden activities. Labourers of the tea garden have been ignored and they suffered as there were no labour welfare activities taken up, that minimum wages were not given and even weekly Ration Cards were not issued and the workers were on the verge of starvation.

(vii) The records available showed that 604.87 acres of land was lying unutilized since a long time and there was no tea plantation in that area by the tea estate owners to whom retention order was given by the State Government and the very purpose of allowing tea estate owners to retain land in excess of ceiling limit got defeated.

(viii) Since the owners are not using the land for the purpose for which it was allowed to be retained and have left it unutilized, there was no reason to continue the retention of the land by appellant any further and so the retention order dt.15.05.1980 was withdrawn for 604.87 acres.

(ix) This land shall be resumed by the State Government and the remaining 78.07 acres should remain in the name of the Appellant but the company is liable to prove by 31.01.2021 regarding its activities and clarify its legal status and based on that, a decision to retain the remaining land will be considered.

(x) A direction was issued to the District Magistrate & Collector, Unakoti District for correction of the land as khas in favour of the State Government and also for correction of all relevant records.

18) After the said order was passed, a memorandum dt.19.02.2021 was issued by the Sub-Divisional Magistrate, Kailashahar, Unakoti to the Appellant prohibiting it from undertaking any kind of activities without prior permission of the competent authority of the Revenue Department also undertaking therein that such activities will be treated as illegal trespass and they would be prosecuted.

The W.P.(C) No.31 of 2023

19) Challenging this order, the Appellant filed WP(C) No.31 of 2023 and sought quashing of the said order and the consequential memorandum and to restore the possession of Tea garden as it was on 05.12.2020.

20) During the pendency of the Writ Petition, the order dt.4.12.2020 and the consequential proceeding dt.19.2.2021 had not been stayed.

Appellant's contentions in the Writ Petition

21) It was contended in the Writ petition by the Appellant that Section 178(1) of the Act permits exemption from Section 164 of the Act which prescribes ceiling on land holdings; that on 15.05.1980 Appellant was allowed to retain 682.94 acres under Section 136; that such an order under Section 178(1) cannot be passed unless there is a determination of the holding of the land in excess of the ceiling limit under Section 164; that the order dt.15.05.1980 was correctly passed treating the Appellant as an 'intermediary' although the application dt.12.09.1963 presented mentioned wrongly that it was under Section 178(1) of the Act.

22) It was contended that the respondents want to snatch the Appellant's right under Art.300A of the Constitution of India by passing the order

dt.05.12.2020, and that in fact there were no ceiling proceedings were conducted till 15.05.1980, and the second respondent had acted with a *mala fide* intention in passing the order dt.03.10.2020.

23) Appellant reiterated that no proceeding was initiated under Chapter XIII of the Act for determining surplus land in excess of the ceiling limit.

24) It is contended that though in the application made in 1963 by the Appellant's predecessors, mention of Section 178(1) of the Act was a mistake, and the said application has to be treated only as one under Section 136 of the Act for retention.

25) It is contended that the order dt.15.05.1980 cannot be treated as an order of exemption under Section 178(1) of the Act and so cannot be withdrawn under Section 178(4) of the Act.

26) It is contended that the retention order cannot be withdrawn.

27) It is contended that the negative status of the Appellant on the Website of Register of Companies was already corrected after documents were filed and its Director's Identification Number was later restored.

28) The report of the District Magistrate & Collector dt.01.10.2020 is alleged to be false and it is also stated that it was not supplied to the Appellant. It is also contended that the District Magistrate could not have conducted any enquiry behind the back of the Appellant.

29) It is stated that there are 2,300 shareholders of the Appellant and the total land holding would fall within the ceiling limit under Section 164A(6) of the Act.

30) It is also stated that the Company is 100 years old and all documents were not available in the hands of the present management.

The stand of the State

31) Counter-affidavit was filed by the State Government stating that a Gazette notification was issued on 23.03.1963 by the State Government under Section

134(1) of the Act declaring that with effect from 15.04.1963 all estates situated in Kailashahar Sub-Division and under Puranrajbari Police Station of Belonia Sub-Division and all rights, title and interest of every intermediary in such estates shall vest in the State Government free from all encumbrances.

32) Therefore, the subject Tea Estate also vested in the Government of Tripura free from all encumbrances and therefore, became Government khas land and the Appellant has suppressed this fact. Any act of the State in correcting the record of rights and showing the land as a Government land would therefore be valid even dehors the order dt.05.12.2020 passed by the Revenue Secretary.

33) It is also contended that the order dt.05.12.2020 is based on the failure of the Appellant to commence business within stipulated time and also non-utilization/lack of proper utilization of the land in respect of which Retention Order was passed on 15.05.1980 and no material was placed before the Revenue Secretary to contradict the allegation of failure to use the land allowed to be retained.

34) It is contended by the respondents that the Appellant-company had made an application on 12.09.1963 for exemption from the operation of Section 164 of the Act and also prayed for retention of the ceiling surplus land; that this was rejected on 04.12.1975 by the competent authority; thereafter, an application dt.13.10.1977 was filed to review the same and on 15.05.1980, an order was passed allowing the Appellant to retain 682.94 acres of land.

35) It is stated that at that time it was not known whether the land acquired by the Appellant was above the ceiling limit under the Act and, therefore, the Appellant was directed to file separate application under Section 178 for exemption, but he never filed it.

36) It is contended that the proceedings dt.05.12.2020 was instituted not to withdraw the exemption order but to withdraw the retention order dt.15.05.1980 allowing the Appellant to retain possession of 682.94 acres for the purpose of cultivation of the Tea Garden.

37) It is admitted that the Appellant-company's status was shown as struck off in 2016 but later after a proceeding was initiated before the NCLT, Kolkata Bench through an order dt.23.12.2020, its status became active.

38) It is also contended that the Appellant never sought for furnishing of the report of the District Magistrate & Collector, Unakoti dt.01.10.2020, but during the course of hearing, the Appellant had sought the same and it was given to the Appellant.

39) It is contended that once any particular land is found to be in excess of the ceiling limit prescribed under Section 164A of the Act, by operation of law itself the said ceiling surplus excess land would vest in the Government as per Section 169 of the Act.

40) It is contended that the power conferred on the Government under Section 136 to allow retention and the power conferred under Section 178 to exempt particular land from the provision of ceiling surplus are both analogous and exercised on grounds and limitations prescribed under the Act itself, and resulting in conditional retention of ceiling surplus land by the land holder. It is stated that the Appellant is wrong in contending that the power of exemption having not been exercised, the order of withdrawal of exemption/retention could not have been passed by the Government.

41) It is stated that the legislative intent is for vesting of all ceiling surplus land with the Government and exemption to retain such ceiling surplus land is subject to orders passed by the Government.

42) It is stated that the Appellant had actually sought for exemption on 12.09.1963 and 13.10.1977 but no such exemption order was passed and so the question of withdrawing such exemption does not arise and in fact it was the retention order which was withdrawn.

43) The respondents also refuted the plea of the Appellant that under Section 164(6) of the Act, stating that the ceiling limit of the company can be identified only when the ceiling limit of every shareholder of the company is identified, and at the time of granting the retention order, that no such determination was possible and there was no scope for such ascertainment and that was why the Appellant was directed in the retention order to apply for an exemption order but it did not do so.

The judgment of the learned Single Judge dt.12.07.2024:

44) The learned Single Judge dismissed the writ petition.

45) After referring to the provisions of the Act including Sections 136, 164, 164A and 178 of the Act, the learned Single Judge held that as per the notification gazetted on 23.03.1963, the Tea Estate with effect from 15.04.1963 had vested in the State Government free from all encumbrances and the Appellant had not placed on record any document to show that it was the lawful owner of the land in question to the extent of 726.03 acres. He also noted that on 04.12.1975, the Revenue Department, Government of Tripura directed the Collector, North Tripura to take action under Section 137 of the Act for taking over possession of the land.

46) The learned Single Judge held that the Appellant had nowhere established its ownership of the land and has not pleaded in the affidavit nor placed any document on the strength of which it can claim ownership and also possession.

47) He also held that the order dt.04.12.1975 was passed by the Commissioner of Revenue Secretary, Government of Tripura and the Appellant had not challenged the same in any legal proceeding and so it attained finality.

48) Consequently, the letter dt.13.10.1977 addressed by the Directors of the Appellant to the Revenue Commissioner to review the said order has no legal weightage and is not recognized under the statute.

49) The learned Judge also held that the Appellant did not attempt to say that Appellant is an intermediary or a raiyati under the Act and its *locus standi* is not established.

50) The learned Single Judge held that since the Gazette notification dt.22.02.1963 and the order dt.04.12.1975 of the Commissioner of Revenue and Secretary to Government of Tripura had attained finality and relief claimed therein for retaining land and for restoring possession was rejected, the impugned proceedings dt.05.12.2020 and the memorandum dt.19.02.2021 have to be sustained on the same footing.

51) He held that it is not open to the Appellant to challenge the present consequential proceedings and seek relief for allowing the retention/restoration. The Court also drew an adverse inference against the Appellant for suppressing the Gazette notification dt.22.03.1963 and the order dt.04.12.1975.

52) Therefore, the learned Single Judge dismissed the writ petition.

The instant Writ Appeal

53) Challenging the same this Writ Appeal is filed.

54) Heard the counsel for the parties who reiterated the contentions raised before the learned single Judge.

Consideration by the Court

55) The Act was enacted in the State of Tripura to consolidate and amend the law relating to land revenue in the State of Tripura and to provide for acquisition of estates and for certain other measures of land reform including *a ceiling on land holdings*.

The important relevant provision of the Act

56) Section 134 of the Act states:

"***134. Notification vesting estates in the State***:

(1) As soon as may be after the commencement of this Act, the State Government may, by notification in the official Gazette, declare that, with effect from the date specified in the notification (hereinafter referred to as the vesting date), all estates situated in any area or areas and all rights, title and interest of every intermediary in such estates shall vest in the Government free from all encumbrances.

(2) Every notification under sub-section (1) shall also be published in such other manner as may be prescribed.

(3) The publication of a notification in the manner provided in sub-sections (1) and (2) shall be conclusive evidence of the notice of declaration to the intermediaries whose interests are affected by such notification".

57) Clause (c) of Section 133 of the Act defines an 'intermediary'' as a

'*person who holds in an estate the right title or interest of a talukdar and includes:*

(i) A person who holds land either revenue free or at a concessional rate, and

(ii) A tenure holder'

58) Part V of the said law in Chapter XIII deals with ceiling on land holdings. In that Chapter, Section 164 states:

"***Section 164 : Ceiling on holdings***:

On and from 24th January, 1971, no person shall, whether as a raiyat or an under-raiyat or as a mortgagee with possession or otherwise, or partly in one capacity and partly in another, hold in aggregate any land in excess of the ceiling limit applicable to him under section 164A".

59) Section 164A prescribes the ceiling limit for various categories of landholders such as adult individuals, company, cooperative society, HUF, partnership firm.

60) Sub-section (6) of Section 164A prescribes that the ceiling limit for a Company like the Appellant shall not exceed the sum total of the ceiling limits of each member of such Company. Explanation thereto states:

" Explanation: For the purpose of determining the ceiling limit of each member referred to in this sub-section, any land held separately by a person who is a member of a ..., company,... shall be deducted from the ceiling limit referred to in sub-sections (1) to (5) so that the sum total of the area of land held by such person whether as such member .. or individually ... may not in any case exceed the ceiling limit applicable to him under these sub-sections."

61) Section 165 directs that "*every person who on 24.01.1971 holds land in excess of ceiling limit shall submit a return giving particulars of the land held by him and indicating therein the parcels of land, not exceeding the ceiling limit, which he desires to retain and the said return is to be submitted in a prescribed form to the competent authority*".

62) Section 166 provides the penalty for non-submission of returns.

63) Section 167 deals with the procedure for determination of excess land.

64) Section 178(1) of the Act empowers the State Government to exempt from operation of Section 164 , on an application made to it within 3 months from the commencement of the Act, any land which is being used for growing tea and land required for purposes ancillary to the cultivation of tea.

65) Sub-section (4) of Section 178 states:

> *"Section 178 :*
>
> *(1) ...*
>
> *(2) ...*
>
> *(3) ...*
>
> *(4) Where any land, in respect of which exemption has been granted under sub-section (1) or sub-section (2) or sub-section (3), ceases to be used, or is not within the prescribed time used, for the purpose for which exemption is granted, the State Government may, after giving the persons affected an opportunity of being heard, withdraw such exemption and all the provisions of this chapter relating to ceiling on land holding will be applicable."*

The Gazette Notification dt.23.3.1963 under Section 134 (1) of the Act

66) A Gazette notification was issued on 23.03.1963 (Annexure –A to the counter affidavit filed by respondents) by the State Government under Section 134(1) of the Act declaring that with effect from 15.04.1963 all estates situated in Kailashahar Sub-Division and under Puranrajbari Police Station of Belonia Sub-Division and all rights, title and interest of every *intermediary* in such estates shall vest in the State Government free from all encumbrances.

67) The Hiracherra Tea Estate is covered by this notification and hence if it claims to be an *intermediary either as a talukdar or holder of land rent free or as a tenure holder*, it's rights, title and interest also stood vested in the State Government free from all encumbrances from the date of the said notification.

68) The Appellant makes no reference to this event anywhere in it's pleadings even though this was placed on record by the respondents and they have taken this plea.

69) No doubt under Section 136(1) (f) of the Act , notwithstanding anything contained in Section 134, an '*intermediary*' shall be allowed to retain w.e.f

vesting date, land comprised in the Tea garden which in the opinion of the State Government is required for such Tea Garden.

70) The Hiracherra Tea Estate/previous management of Appellant filed a representation (Annexure-4) dt.12.09.1963 before the Administrator, Tripura Administration titled " *Prayer for exemption from the operation of Section 164 of the Tripura Land Revenue and Land reforms Act,1960 under Section 178 (1) of the Act*" stating that it is in possession of *land* of extent 735.66 acres and is seeking exemption from the operation of Section 164 of the Act *invoking Section 178(1) of the said Act* and requesting that it be allowed to *retain the* ceiling *surplus* land under Section 136(1)(f) of the Act.

71) In the said application, the appellant merely stated that it is in possession of Ac.735.66 of land, but did not say anything as to how it fulfils the status of an 'intermediary'.

72) Moreover in the said representation (Annexure-4) dt.12.09.1963 it was *admitted* by previous management of Appellant that it was holder of *ceiling surplus land.*

73) Also it did not mention as to whether any return had been filed by it under Section 165 as to extent of it's land holding, whether any adjudication under section 167 was made as to how much land held by it is within the ceiling limit, and how much is in excess of the ceiling limit.

74) The fact that the representation mentions Section 178(1) of the Act indicates that the Appellant also sought exemption under Section 178 from provisions of Section 164 of the Act (dealing with ceiling on land holding) in addition to prayer for retention.

75) Though counsel for Appellant contends that the Appellant was under a mistake in stating in the representation dt.12.9.1963 that it is holding surplus ceiling land and mentioning of Section 178 (1) therein, at this point of time i.e almost

60 years later, it is too late in the day for it to try to wriggle out of such admission and it is estopped from doing so.

76) Counsel for Appellant does not deny that the Hiracherra Tea Estate/previous management did not file any return under Section 165 of the Act at all but contends that for such default, the State can only take action under Section 166 and impose a penalty and permit it to file a return or collect information and then only take possession of land and this had not been done. So he contends that the State cannot take back the land.

77) As per Section 165 of the Act every person who holds as on 24.1.1971 land in excess of ceiling limit like the petitioner is bound to file a return about the land holding of its members and get determined under section 167 as to how much extent of land held by it is within ceiling limit and how much is in excess of the ceiling limit prescribed under the Act.

78) This is necessary since appellant's permissible land holding can be determined only after the ceiling limits of each of it's members is known and determined, and then deducted from the ceiling limit prescribed so that the sum total of the area of land held by such person whether as such member or individually or as a member of the family does not exceed the ceiling limit applicable to him under various sub-sections of Section 164.

79) The law which imposes ceiling on land holdings like the Act is covered by Art.31-A of the Constitution and is intended to give effect to the directive principle of State policy contained in Art.39 (b) i.e ownership and control of material resources of the community are to be distributed as best to subserve the common good. It is a provision undoubtedly in public interest.

80) A party like the Appellant which avoids filing a return under Section 165 of the Act and avoids getting an adjudication under Section 167 of whether or

not it is holding land within or in excess of the ceiling limit, is a party trying to subvert the law and taking advantage of it's own wrong.

81) In ***Kusheshwar Prasad Singh v. State of Bihar***[1]*,* the Supreme Court held:

> ***"14.*** *In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in* ***Mrutunjay Pani v. Narmada Bala Sasmal***[2] *wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim* ***commodum ex injuria sua nemo habere debet*** *(no party can take undue advantage of his own wrong).*
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> ***15.*** *In* ***Union of India v. Major General Madan Lal Yadav***[3] *the accused army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p. 142, para 28) referred to* ***Broom's Legal Maxims*** *(10th Edn.), p. 191 wherein it was stated:*
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> > *"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."*

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[1] (2007) 11 SCC 447, at page 451
[2] AIR 1961 SC 1353
[3] (1996) 4 SCC 127

> ***16.*** *It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".*

82) The Appellant therefore cannot take advantage of the lapse, if any, on the part of the State in taking action under Section 166 of the Act, (though it had already taken action on 20.3.1963 under Section 134 (1) of the Act) and try to retain land which is surplus ceiling land of the Tea Estate in excess of Ac.600.

The order dt.4.12.1975 of the Commissioner of Revenue and Secretary to Government of Tripura rejecting Appellant's representation to retain the surplus land

83) As stated supra, the said application dt.12.9.1963 was dismissed on 04.12.1975 by the Commissioner of Revenue and Secretary to Government of Tripura.

84) He stated in his order that the Manager of the Appellant Tea estate had not appeared for 5 dates of hearing though aware and informed of the same and therefore it is not interested in obtaining retention order under Section 136(f) of the Act; that the Labour Department representative stated that (i) there were huge arrears of wages, provident funds etc to be cleared, (ii) few labourers were plucking leaves of tea bushes found here and there for sheer survival,(iii) that the factory was in a dilapidated condition with no hope of revival and (iv) no useful purpose would be served by giving retention order in favor of the intermediary; that the representative of the Union of the Workmen stated that (a) the tea garden was not in running condition , (b) no payment was made to the labour for over one year, (c) that the management was not interested in running the garden, (d) that workers were starving, and (e) that over 50% of the area was vacant; that the Commissioner himself visited the Garden on 15.6.1975 and verified these facts; and so no purpose would be served by

allowing the applicant to retain land comprised in the Tea Garden under Section 136 (1) (f).

85) He also held that such retention order is not necessarily to be based on planted area of the garden when vacancy is observed to the tune of over 50% in the plantation, and the garden would not be a viable unit by virtue of the retention order restricted to the planted area alone as various factors come into play such as healthy management, labour affairs, revenue likely to be accrued to the State and the interest shown by the intermediary in fulfilling conditions of settlement.

86) He therefore rejected the plea of Appellant for retention of the Tea estate and directed the Collector, North District to take action/s.137 to take over possession of the land observing the formalities.

87) The appellant, in the Writ Petition, has also suppressed this order.

88) The suppression of the Gazette Notification dt.23.3.1963 and the order dt.4.12.1975 in the Writ Petition shows that the appellant has approached this Court with unclean hands.

The request of Appellant made on 13.10.1977 to review the order dt.4.12.1975

89) Almost two years after the order dt.4.12.1975 was passed, a request was made on 13.10.1977 by Appellant for reviewing the said order.

90) The Appellant contended that it had taken control over the garden under an arrangement with the United Bank of India and the previous Directors of the Hiracherra Tea Estate with effect from January, 1977; that it has since been running the Estate satisfactorily; that it had got constructed a new factory as the previous one was in a dilapidated condition; that the Estate could not be run by its previous owners due to paucity of funds, mismanagement and other reasons; but since the Appellant has taken it over under a new management, the previous order passed on 04.12.1975 is required to be revoked.

91) Under what provision of the Act this representation was given seeking review, when there is no express power conferred on any officer for review of orders such as the order dt.4.12.1975 is not explained by Appellant's counsel.

92) It is settled law that power of review has to be conferred by the statute and there is no implied power of review.

93) In ***Kalabharati Advertising v.*** Hemant ***Vimalnath Narichania***[4]***,*** the Supreme Court held that jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.

The order dt.15.5.1980 of the Secretary to Govt. of Tripura, revenue Department reviewing the order dt.4.12.1975 and allowing Appellant to retain land

94) The request dt.13.10.1977 of Appellant to review the order dt.4.12.1975 was considered on 15.05.1980 by the Secretary to the Government of Tripura, Revenue Department and was allowed by the said official.

95) The said order dt.15.5.1980 recorded that previously the Company was under a different Management, that United Bank of India which was the mortgagor Bank and had full rights, that the previous order was passed without hearing the United Bank of India, that there was violation of principles of natural justice, that the order dt.4.12.1975 was stayed by his predecessor, and the SDO gave a report that the garden has started functioning under the new management and so it can be allowed to retain Ac.682.94.

96) The said order also specifically notes that it is not known *whether the land possessed by Appellant will attract the ceiling chapter provision* and *the Tea Estate may, if necessary, file a separate application for exemption under Section 178*.

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[4] (2010) 9 SCC 437 : (2010) 3 SCC (Civ) 808, at page 444 :

97) It also recorded that the total recorded area of the Tea Estate is 726.03 acres and the SDO had mentioned that 43.09 acres had already been allotted to the landless families and only 682.94 acres can be allowed to be retained.

98) In our opinion, firstly, the Secretary to the Government of Tripura, Revenue Department had no power to review order dt.15.5.1980 as no such power had been conferred on him by the Act to review it. So the said order dt.15.5.1980 is one without jurisdiction and a nullity.

99) Secondly, the Secretary did not say anything as how appellant fulfils the status of an 'intermediary' entitled to retain land under section 136(1) (f) of the Act. Nothing is recorded in the order as to basis for treating the appellant as an 'intermediary' under section 133 (c) of the Act. Without recording such a finding, which is a precondition to exercise of power under Section 136(1) (f) he could not have allowed the appellant to retain Ac.682.94 acres.

100) Thirdly, in the order dt.15.5.1980 passed by him, instead of merely expressing a doubt as to whether the land ceiling provision is attracted and asking the Appellant to apply for a specific order under Section 178, the Secretary should have got examined the ceiling aspect in detail and then only exercised his power under Section 136.

101) This is because the power vested in the Secretary under Section 136 of the Act is a public trust. He is accountable for it's exercise. He cannot abuse the said power to benefit a private party at the expense of public interest by conveniently avoiding looking into the land ceiling aspect.

102) In ***Uddar Gagan Properties Ltd. v. Sant Singh***[5], the Supreme Court held:

> *" Statutory and public power is trust and the authority on whom such power is conferred is accountable for its exercise. Fraud on power voids the action of the authority. Mala fides can be inferred from undisputed facts even without naming a particular officer and even*

[5] (2016) 11 SCC 378 : (2016) 4 SCC (Civ) 198, at page 400 :

without positive evidence. In the present case, abuse of power in dealing with the matter by the functionaries of the State is more than clear as rightly found by the High Court." (emphasis supplied)

103) In ***Common Cause v. Union of India***[6]*,* the Supreme Court declared that it is duty-bound to interfere whenever the Government acts in a manner, which is unreasonable and contrary to public interest. In succinct, the Government cannot act in a manner, which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest.

104) No material is placed by Appellant that it had sought separately as directed in the order dt.15.5.1980 any exemption under Section 178 or secured any such exemption order under Section 178 exempting it from Section 164 of the Act which prescribes the ceiling limit of land holding.

105) But notwithstanding the same, the effect of the order dt.15.5.1980 was in effect an exemption under Section 178 from operation of Section 164 of the Act because such a large extent as Ac. 682.94 acres, which is normally beyond the ceiling limit under the Act, has been permitted to be retained by appellant for it's enjoyment .

106) It is clear that the Secretary to Government ignored his own lack of jurisdiction to review the previous order dt.4.12.1975 and also the applicable ceiling law provisions in the Act and unduly favored the Appellant maybe for ulterior reasons.

107) Such order dt.15.5.1980 cannot be relied on by Appellant for retaining the land of the Tea estate.

<u>The show cause notice dt.3.10.2020</u>.

108) As stated supra, Section 178(4) provides that where any land in respect of which exemption had been granted under sub-section (1) or sub-section (2) or

[6] (2014) 6 SCC 552, at page 559 :

sub-section (3) of Section 178, ceases to be used, for the purpose for which exemption had been granted, the State Government may, after giving the persons affected an opportunity of being heard, withdraw such exemption and all the provisions of the Chapter XIII dealing with ceiling on land holdings will become applicable.

109) On 03.10.2020 the Secretary, Revenue Department issued show-cause notice to the Appellant for taking action under sub-section (4) of Section 178 and directed the Appellant to appear before it on a complaint/report received by the District Magistrate & Collector, Unakoti District dt.01.10.2020 saying that the Tea Estate is not functioning.

110) Thereafter, a hearing was conducted in which the Appellant's representative also participated and an order was passed on 05.12.2020 by the Secretary, Revenue Department.

The order dt.5.12.2020 passed by the Secretary , Revenue Department

111) In the said order dt.5.12.2020, the retention order dt.15.05.1980 was withdrawn for 604.87 acres for the reasons already set our above in para 17 supra.

112) After the said order was passed, a memorandum dt.19.02.2021 was issued by the Sub-Divisional Magistrate, Kailashahar, Unakoti to the Appellant prohibiting it from undertaking any kind of activities without prior permission of the competent authority of the Revenue Department also undertaking therein that such activities will be treated as illegal trespass and they would be prosecuted.

113) As stated supra, challenging this order, the Appellant filed WP(C) No.31 of 2023 and Appellant sought quashing of the said order and the consequential memorandum and to restore the possession of tea garden as it was on 05.12.2020. The said Writ was dismissed on 12.7.2024.

114) It is the plea of the Appellant that since there was no order in it's favor under Section 178 of the Act at all, the question of the State invoking Section 178(4) to withdraw the retention order dt.15.5.1980 does not arise. It's plea is that power to retain the land under section 136 (1) (f) has no relation to provisions dealing with the ceiling on land holdings contained in Chapter XIII of the Act such as Sections 164 – Section 178.

115) Such a plea cannot be countenanced.

116) The order dt.15.5.1980 has to be treated as an order under Section 178 as explained supra in para 105.

117) The provisions of the Act have to be harmoniously interpreted.

118) Sections 164-178 prescribing ceiling on land holdings are in public interest to carry out the policy in Art.39(b) of the Constitution. They cannot be circumvented by any land holder like Appellant by simply seeking retention of land under Section 136 and avoiding adjudication of ceiling limit of it's holding. Allowing the Appellant to do so, would amount to permitting commission of a fraud on the statute.

119) So we agree with contention of the counsel for the respondents that Section 136 allows "retention" and Section 178 "exempts" a land from provisions of "ceiling provisions", that both powers are analogous and have to be exercised on grounds and limitations prescribed in the Act itself, and resulting in conditional retention of the ceiling surplus land by the land holder.

120) In our opinion, if there is no 'exemption' under Section 178, there could not have been a 'retention' order for such a large extent exceeding Ac.682.94 violating the land holding 'ceiling limit' prescribed in the Act. It would be travesty of justice to allow a party like Appellant to retain such large quantity of land in excess of the ceiling limit prescribed under the Act.

121) We can also look at it in another manner.

122) The order dt.15.5.1980 reviewed the previous order dt.4.12.1975 rejecting Appellant's application under section 136 (1) (f) of the Act.

123) We have already held that the order dt.15.5.1980 is an order passed without jurisdiction as no power of review has been conferred on the Secretary to Government to review the order dt.4.12.1975.

124) Assuming for the sake of argument without conceding that the order dt.5.12.2020 is one without jurisdiction and a nullity as contended by Appellant, setting aside the said order would result in the revival of the order dt.15.5.1980 which is also without jurisdiction and a nullity. In such a situation, this Court need not interfere and grant relief to the Appellant.

125) In ***Gadde Venkateswara Rao v. Govt. of A.P*** [7]**.,** the Supreme Court held that if setting aside one illegal order results in reviving another illegal order, the High Court ought not to grant relief and set aside the last illegal order.

> ***"19.*** *The result of the discussion may be stated thus : The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely, the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed : the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power under Section 72 of the Act to review an order made under Section 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? <u>If the High Court had</u>*

[7](1966) 2 SCR 172 : (1966) 2 SCJ 270 : AIR 1966 SC 828

quashed the said order, it would have restored an illegal order — it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case." (emphasis supplied)

126) This principle was also reiterated in ***Raj Kumar Soni v. State of U.P.***[8] as under:

" 15. It is true, in the show-cause notice issued on 5-4-1999 by the District Magistrate there is no mention about the order dated 9-7-1992 withdrawing the powers conferred upon the Sub-Divisional Officer in the matter of according grant of lease of government lands. It is, however, stated that the Parganadhikari/Sub-Divisional Officer is not authorised to grant land, under the Government Grants Act, the authority to grant land to certain extent for residential purposes is vested in the District Magistrate. It is in the final order of the District Magistrate a mention is made about the proceedings under which the powers of the Sub-Divisional Magistrate had been withdrawn as early as on 9-7-1992 much prior to the Sub-Divisional Officer according grant on 20-5-1993. The appellants may be technically right in contending that the order of the District Collector is based on the grounds which were not specifically mentioned in the show-cause notice issued to the appellants. But at the same time we are required to bear in mind that in the show-cause notice it is clearly stated that the Parganadhikari/Sub-Divisional Officer is not authorised to grant land, under the Government Grants Act, the authority to grant land to certain extent for the residential purposes is vested in the District Magistrate. It was, therefore, incumbent upon the appellants to plead and establish that the Sub-Divisional Officer had the authority to grant the government land on lease for residential purposes. The High Court while exercising the jurisdiction under Article 226 of the Constitution of India had come to the conclusion that the order of the Sub-Divisional Officer upon which the whole claim of the appellants rests was invalid

[8] (2007) 10 SCC 635, at page 641

and improper. The High Court itself could have set aside such invalid and improper order. Therefore, in our considered opinion nothing turns on this argument. Even if there was any technical violation of the rules of natural justice, this is not a fit case for interference, as such interference would result in resurrection of an illegal, nay, void order.

In ***Gadde Venkateswara Rao v. Govt. of A.P****.(2 supra) a Primary Health Centre was formerly inaugurated at a particular village subject to certain conditions. Since those conditions were not satisfied, the Panchayat Samithi resolved to shift it to another village. The Government, in exercise of its review jurisdiction, interfered with the resolution so passed by the Panchayat Samithi without providing any opportunity whatsoever to the Panchayat Samithi. The Government's order was challenged in a proceeding under Article 226 of the Constitution of India. The A.P. High Court held the order passed by the Government on the review to be bad, but did not interfere on merits. The Supreme Court, while confirming the order of the High Court observed that: (AIR p. 837, para 17)*

"If the High Court had quashed the said order, it would have restored an illegal order—it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi."

<u>The Supreme Court opined that the High Court was right in refusing to exercise its extraordinary discretionary power under Article 226 of the Constitution of India</u>.

17. In ***M.C. Mehta v. Union of India****[9] this Court, relying upon Venkateswara Rao1 observed: (SCC p. 244, para 17)*

"The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the Appellant in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the Appellant

[9] (1999) 6 SCC 237

and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law."

18. In our view, on the admitted and indisputable facts set out above, any interference with the impugned order of the District Collector would result in restoration of orders passed earlier in favour of the appellants which are otherwise not in accordance with law."

127) The contention of the appellant that the Secretary, Revenue cannot withdraw the retention order dt.15.5.1980 in it' s favor cannot be accepted because the order dt.15.5.1980 itself was also passed in appellant's favor by the then Secretary, Revenue Department. If the said Officer can grant it to appellant under section 136(1) (f) on 15.5.1980, it cannot be said that his successor cannot withdraw it on 5.12.2020.

128) The plea of the appellant that the order dt.15.5.1980 allowing retention of land in appellant's favor cannot be altered in any situation cannot also be countenanced because the previous order dt.4.12.1975 rejecting appellant's request for retention, was recalled on basis of appellant's representation dt.13.10.1977. If the appellant says that the former action is not permissible, the latter action also is not permissible.

129) If the former order dt.15.5.1980 is illegal, a fraud on the statute and one without jurisdiction, it can be certainly be withdrawn on 5.12.2020.

130) The plea that the order dt.15.5.1980 is the source of title of the appellant cannot be accepted since we have held that it is passed without jurisdiction and is a nullity and no rights can be based on such an order. We also reject the plea of appellant that it is 'raiyat' because of the said order.

131) The further contention of appellant that the Secretary of Revenue department cannot exercise power under Section 178(4) of the Act and that he exceeded his jurisdiction has no merit as the State Government is conferred such power and it always acts through it's Secretaries.

132) The pleas raised in the Writ Appeal at para B pg.6 are not found in the Writ Petition and have not been substantiated by any documentary evidence.

133) We also do not find any error in the finding recorded in the order dt.5.12.2020 of the Secretary that the 604.87 acres of land was lying unutilized since a long time, that there was no tea plantation in that area by the appellant , that the Tea estate was not running, that Labourers of the Tea garden have been ignored and they suffered, that there were no labour welfare activities taken up, that minimum wages were not given and even weekly Ration Cards were not issued and the workers were on the verge of starvation.

134) When the records available showed that the appellant to whom retention order was given by the State Government was not putting it to use, the very purpose of allowing it to retain land in excess of ceiling limit got defeated. Consequently, there was no reason to continue with retention of the land any further and so the retention order dt.15.05.1980 was rightly withdrawn for 604.87 acres on 5.12.2020.

135) For all the aforesaid reasons, and since the appellant did not come to the Court with clean hands, we see no merit in the Writ Appeal. It is accordingly dismissed. No costs.

136) All pending applications, if any, shall stand disposed of.

(S. DATTA PURKAYASTHA, J) **(M.S. RAMACHANDRA RAO, CJ)**

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